

**Exhibit DP 1.1**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**DESERT POWER LP**

**AND**

**PACIFICORP**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_ 2004, is between Desert Power, L.P., ("Seller") and PacifiCorp (collectively, the "Parties").

**RECITALS**

Seller has an existing facility and intends to construct, own, operate and maintain a facility for the generation of electric power located in, Tooele County, Utah with a Nameplate Capacity Rating of approximately 120,000 kilowatt with an estimated output of approximately 90,000 kilowatt (kW) ("Facility"); and

Seller intends to operate the Facility as a "qualifying facility," as such term is defined in Section 3.2.6 below.

Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 27,000,000 kilowatt-hours, (kWh) on a dispatchable basis, which amount of energy PacifiCorp will include in its resource planning; and

Seller shall sell and PacifiCorp shall purchase the Net Output from the Facility in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 "As-built Supplement" shall be a supplement to Exhibit A, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 "Billing Period" means the time period between PacifiCorp's reading of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.3 "Commercial Operation Date" means the date that the Facility is deemed by Seller in its reasonable judgement to be fully operational and reliable which shall require, among other things, that all of the following events have occurred:

1.3.1 PacifiCorp has received from Owner a certificate from a Licensed Professional Engineer stating that the Facility is able to generate electric power reliably;

1.3.2 Start-Up Testing of the expanded Facility has been completed in accordance with Section 1.23;

1.3.3 After PacifiCorp has received notice of completion of the upgrade Start-Up Testing, PacifiCorp has been provided a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, using the fuel type and composition specified in this Agreement, the Facility has operated for testing purposes under this Agreement uninterrupted for a period of one (1) consecutive sixteen (16) hour day at a rate of at least 80,000 kW based upon any sixty (60) minute period for the entire testing period. The Facility must provide three (3) working days' written notice to PacifiCorp prior to the start of the initial testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive three (3) day testing period and provide PacifiCorp forty-eight (48) hour written notice prior to the start of such testing period;

1.3.4 PacifiCorp has received from Seller a certificate a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, in accordance with the Generation Interconnection Agreement, any additional required interconnection facilities attributable to the expansion have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system;

1.3.5 PacifiCorp has received, if requested by PacifiCorp in writing by no later than April 30, 2005 copies, of any or all requested Required Facility Documents;

1.4 "Commission" means the Public Service Commission of Utah

1.5 "Contract Price" means the applicable price for capacity or energy, or both capacity and energy, stated in Section 5.1.

1.6 "Contract Year" means a twelve (12) month period commencing at 00:00 hours Mountain Prevailing Time on January 1 and ending on 24:00 hours Mountain Prevailing Time on December 31 of the same calendar year, except that the first Contract Year shall commence

at 00:00 hours Mountain Prevailing Time of the Commercial Operation Date, if other than January 1, and end at 24:00 hours Mountain Prevailing Time on December 31 of the calendar year in which the Commercial Operation Date occurred.

1.7 "Credit Requirements" means either: (i) Seller maintains a senior unsecured debt rating from Standard & Poor's of BBB or better or (ii) Seller posts any security required pursuant to Section 8.2.

1.8 "Delay Liquidated Damages" shall be those damages payable to PacifiCorp due to Seller's failure to meet the Scheduled Commercial Operation Date, as specified in Section 2.3., calculated as the price for purchased power calculated in accordance with Exhibit E times the shortfall MWH's of power not delivered by Seller or its designee for the month for which such Delay Liquidated Damages are payable, which amount shall be deducted from the sum due Seller hereunder for such month, except if the Delay Liquidated Damages are greater than such amount otherwise due Seller hereunder, then such difference shall be due from Seller and may be deducted from the Project Development Security provided for in Section 8.1. hereof if not otherwise paid by Seller in accordance with the billing and payment terms hereof.

1.9 "Facility" means Seller's Generation facility as described in Exhibit A of this Agreement.

1.10 "Generation Interconnection Agreement" means the generation interconnection agreement that has been entered into separately between Seller and PacifiCorp's transmission department providing for the construction and operation of the interconnection facilities at the Point of Delivery, as such agreement may be amended from time to time.

1.11 "Hourly Market Price" means the applicable Index Price for the specified time period (on-peak or off-peak) in a specified day multiplied by the Hourly Shaping Factor.

1.12 "Hourly Shaping Factor" means the hourly shaping factors utilized by PacifiCorp for transactions at Palo Verde, as set forth in Exhibit G for each hour. By notice given to Seller at least sixty (60) days before the beginning of another Contract Year, PacifiCorp may adjust the hourly shaping factors set forth in Exhibit G in a commercially reasonable manner, with such adjustment to be in effect during the next Contract Year; provided, the summation of the hourly shaping factors for a the on-peak sixteen (16) hour period, divided by sixteen (16), shall equal at least one (1), and the summation of the hourly shaping factors for the eight (8) hour off-peak time period shall equal at least one (1). Such adjustment shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

1.13 "Index Price" means the price of power on a given day as specified in the applicable Dow Jones Palo Verde index or any replacement index or reasonable substitution agreed to by both Parties.

1.14 "Licensed Professional Engineer" means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Utah, who has

training and experience in the engineering discipline(s) relevant to the matters with respect to such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with either PacifiCorp or with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or any PacifiCorp Facility, or of a manufacturer or supplier of any equipment installed in the Facility, or any PacifiCorp Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller. PacifiCorp's approval shall not be unreasonably withheld. If no Utah Licensed Engineer meets these criteria, then the parties may mutually agree to a Licensed Engineer nevertheless mutually acceptable to them or, failing that, to a Licensed Engineer knowledgeable in the requirements of the Western Electric Coordinating Council.

1.15 "Nameplate Capacity Rating" means the maximum capacity of the Facility, expressed in kW, when operated consistent with the manufacturers' recommended power factor and operating parameters, as set forth in Exhibit A.

1.16 "Net Dependable Capacity" means the maximum capacity the Facility can sustain over a specified period at ambient temperature of 59° F, 20° Relative Humidity, modified for seasonal limitations and reduced by the capacity required for station service or auxiliaries. For purposes of this Agreement, Net Dependable Capacity shall be 90,000 Kw, subject to adjustment following final testing of the Facility.

1.17 "Net Output" means all energy and capacity produced by the Facility and available for sale, less station use not obtained from other sources and less transformation and transmission losses and other adjustments, if any.

1.18 "Point of Delivery" means the high side of the generation step-up transformer(s) located at the point(s) of interconnection between the Facility and PacifiCorp's transmission system located at the facility, as specified in the Generation Interconnection Agreement and in Exhibit B.

1.19 "Prime Rate" means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.20 "Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts

known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.21 "Replacement Price" means the price at which PacifiCorp, acting in a commercially reasonable manner, actually purchases for delivery at a main receipt point on its transmission system as replacement for any energy or capacity required to be but not delivered by Seller pursuant to this Agreement, plus (i) actual costs reasonably incurred by PacifiCorp in purchasing such replacement, if any (not to exceed five percent (5%) of such purchase price); and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp to the such point of delivery if not included in the purchase price, or absent a purchase but delivery from PacifiCorp's own plants, the market price derived at the point of delivery for such energy or capacity not delivered, as determined by PacifiCorp in a commercially reasonable manner.

1.21 "Required Facility Documents" means all licenses, permits, authorizations, and agreements necessary for construction, operation, and maintenance of the Facility, as set forth in Exhibit C.

1.22 "Scheduled Commercial Operation Date" means July 1, 2005, so long as final Commission approval no longer subject to judicial review is obtained by April 30, 2004, and extended day-to-day thereafter for each day such approval is not obtained by April 30, 2004.

1.23 "Scheduled Deliveries" means capacity and energy scheduled by PacifiCorp for delivery by Seller in accordance with Section 6.5. up to the Net Dependable Capacity.

1.23 "Scheduled Maintenance Periods" means those times, as reflected in Exhibit D, during which the Facility is shut down for routine maintenance with the advance Notice to PacifiCorp as provided in Section 6.2. No Scheduled Deliveries shall be scheduled by PacifiCorp from the Facility during Scheduled Maintenance Periods without Seller's consent.

1.24 "Start-Up Testing" means the completion of start-up tests as set forth in Exhibit E hereto.

## SECTION 2: TERM; COMMERCIAL OPERATION DATE

2.1 This Agreement shall become effective after execution and approval by the Commission, or otherwise as ordered by the Commission.

2.2 Seller shall cause the expanded Facility to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date. If the Commercial Operation Date occurs 120 or more days after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp Delay Liquidated Damages calculated equal to the actual cost difference incurred between market costs as listed by the DJ PV index and cost of payment under the terms of this agreement per day or portion of day the Commercial Operation Date occurs after such date following the Scheduled Commercial Operation Date, up to a total of 120 days, for those kilowatts not delivered by Seller, except that during such period of non-operation, Seller shall

have the right to have a third party deliver those undelivered kilowatts at a receipt point where PacifiCorp has available capacity. The parties agree that the damages PacifiCorp would incur due to delay in achieving the Commercial Operation Date on or before the Scheduled Commercial Operation Date would be difficult or impossible to predict with certainty, and that the Delay Liquidated Damages are an appropriate approximation of such damages but such damages should not exceed actual demonstrable costs.

2.3 Except as otherwise provided herein, this Agreement shall terminate at the end twentieth (20<sup>th</sup>) Contract Year.

### SECTION 3: REPRESENTATIONS AND WARRANTIES

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, if required, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.1 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a limited partnership duly organized and validly existing under the laws of the state of Nevada duly qualified to do business in Utah.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's general partner has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a "qualifying facility" ("QF") as that term is defined for a plant meeting Seller's plant's qualifying criteria in the version of 18 C.F.R. Part 292 in effect on the date of Seller's filing of self-certification of QF status with the Federal Energy Regulatory Commission ("FERC").

#### SECTION 4 : DELIVERY OF POWER

4.1 Commencing on the Commercial Operation Date and continuing through the term of this Agreement, Seller shall sell and make available to PacifiCorp the entire Net Output from the Facility at the Delivery Point.

4.2 Upon reasonable request from PacifiCorp, Seller shall use reasonable commercial efforts to deliver to PacifiCorp any available energy or capacity from this Facility in excess of Scheduled Deliveries upon such conditions and at such prices as may be agreed to in advance by the Parties.

## SECTION 5: PURCHASE PRICES

5.1 PacifiCorp shall pay Seller monthly for all deliveries of Net Output up to Net Dependable Capacity which shall consist of a fixed capacity payment determined as follows:

Total Monthly Price = Variable Cost + Fixed Maintenance Cost Payment + Capacity Payment

Where :

Variable Cost = The sum of the following for all hours in a billing month:

((10.2 times the Daily Gas Price) plus (the VCF of the Hourly Power Cost)) times the hourly generation output, measured in MWh.

VCF = WV Variable Cost Factor as determined as of the date of this Agreement

Turbine Start Cost = WV turbine start cost which shall be multiplied per turbine times the number of times it was started in a month, and the total amount so determined for both turbines shall be added to the Variable Cost for such month in computing the amount due hereunder.

Fixed Monthly O&M Cost = Net Dependable Capacity times (WV fixed annual O&M costs divided by 12), except that for the first Contract Year, the WV fixed annual cost shall be multiplied by a fraction the numerator of which shall be the number of months, including any fraction thereof, from the Commercial Operation Date divided by twelve, and such number, so determined, divided by the number of months used in the numerator in determining the fraction so used.

Capacity Payment = Net Dependable Capacity times (WV Annual Lease Factor divided by 12).

For purposes hereof, the West Valley costs shall be those reflected in PacifiCorp's rate filing pending as of the date of this Agreement.

5.1.1 The Fixed Monthly O&M Cost, the VCF, and the Turbine Start Cost shall be subject to adjustment for inflation on each anniversary of the Agreement, which adjustment shall be equal annually to the percentage increase during such year in the Producer Price Index or comparable index agreed to by the parties as a reasonable replacement index is no longer

published. In addition, the calculation of the Fixed Monthly O&M cost shall be adjusted to include any new taxes or governmental levies subsequently imposed.

5.1.2 If Seller fails for any reason other than Force Majeure to deliver Scheduled Deliveries from its Facility, or make available either itself or by a third-party on its behalf at any Utah delivery point where PacifiCorp has available capacity, Seller shall pay PacifiCorp damages equal to the positive difference, if any, obtained by subtracting from the Contract Price the Replacement Price for any Scheduled Deliveries not delivered, which amount shall be a credit that PacifiCorp shall be entitled to apply against any sums due Seller herein for the month in which such short fall occurs, unless the amount of such credit is more than the amount due from PacifiCorp for such month, in which event such net remaining amount due PacifiCorp shall be paid by Seller to PacifiCorp on the date PacifiCorp's payment would have been due.

5.1.3 Payments due hereunder shall be due within 10 days after an invoice has been provided. Buyer shall pay any non-disputed portions of such an invoice by wire transfer to an account as directed by Seller. Parties shall resolve any disputed billings within 30 days after billing. Any undisputed invoice paid shall be deemed to be correct after 12 months. Disputed billings that are determined to be correct shall carry interest at a rate equal to the Buyers after-tax allowed rate of return on equity.

## SECTION 6: OPERATION AND CONTROL

6.1 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement.

6.2 Seller may cease operation of the entire Facility or individual units, if applicable, during Scheduled Maintenance Periods not to exceed forty-five (45) days each Contract Year (unless otherwise agreed, which agreement will not be unreasonably withheld). Scheduled Maintenance Period shall be reasonably determined by Seller and provided to PacifiCorp at least ninety (90) days prior to the commencement of each Contract Year. Seller shall determine Scheduled Maintenance Periods in consultation with PacifiCorp in a joint effort to minimize disruption and cost to Seller and to maximize availability of the Facility during peak periods.

6.3 If all or part of the Facility ceases operation for unscheduled maintenance, Seller shall promptly notify PacifiCorp of the same including the time when the shutdown occurred or is expected to occur and the anticipated duration of such shutdown. Seller shall use reasonable commercial efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during non-peak hours.

6.4 At least sixty (60) days prior to the commencement of each Contract Year, PacifiCorp shall provide Seller with its projected schedule for the Facility for the following Contract Year. If PacifiCorp's projections thereafter change, PacifiCorp shall promptly notify Seller of the same. Seller shall promptly advise PacifiCorp of any expected changes in the availability of its Facility, including the details of any such changes.

6.5 By no later than 7:00 a.m. Pacific Prevailing Time each day, PacifiCorp shall notify Seller of the Scheduled Deliveries for the following calendar day. By no later than 8:00 a.m. Pacific Prevailing Time of the same day, Seller will notify PacifiCorp if it anticipates that it will not be able to meet the Scheduled Deliveries for any reason.

6.6 PacifiCorp may request deliveries from the Facility in addition to Scheduled Deliveries. Seller shall use reasonable commercial efforts to comply with any such request, if Seller is able to obtain natural gas supplies required for such additional deliveries. If Seller is unable to secure delivery of required natural gas supplies, PacifiCorp may deliver the same to Seller at its meter station, in which case, PacifiCorp shall advise Seller of the cost of gas per MMBtu so delivered, which amount multiplied by the volume of gas delivered to Seller by PacifiCorp shall be included in calculating the variable cost for such period, but thereafter shall be deducted from the sum due from PacifiCorp for such month. PacifiCorp shall pay all incremental costs incurred by Seller in providing such unscheduled deliveries, including any penalties incurred by Seller in connection with delivery of such natural gas.

#### SECTION 7: FUEL

Seller shall use commercial reasonable efforts to obtain all natural gas supplies necessary to make Scheduled Deliveries from the general gas market, and shall promptly notify PacifiCorp if its ability to obtain such supplies appears uncertain.

#### SECTION 8: SECURITY

8.1 Within ninety (90) days of final Commission approval no longer subject to judicial review of this Agreement, Seller shall either post a bond or deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both parties the sum of two hundred fifty thousand and no/100 dollars (\$250,000.00) ("Project Development Security") or provide a guarantee from an entity having a senior unsecured debt rating from Standard & Poor's of BBB or better. Such sum shall earn interest at the rate applicable to money market deposits, except that the monies shall be put into higher yielding certificates of deposits that are available equal to the longest period prior to there being a call upon such amounts. In the event the Commercial Operation Date occurs on or after 120 days after the Scheduled Commercial Operation Date, the amount payable as Delay Liquid Damages for each such month thereafter, up to 120 days, exceeds the amount payable to Seller for such month, then PacifiCorp shall be entitled to withdraw from such escrow account or draw against such bond, in either event if posting has been required pursuant to the terms hereof, the amount of the net unpaid amount of Delay Liquidated Damages not otherwise paid by Seller in accordance with the billing and

payment provisions hereof. Once the Commercial Operation Date occurs, the Seller shall be entitled to any and all remaining funds in the escrow account, and such funds shall be paid to Seller.

8.2 If requested by PacifiCorp, Seller shall within thirty (30) days provide PacifiCorp with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

#### SECTION 9: METERING

9.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement.

9.2 Metering shall be performed at the location and in the manner specified in Exhibit B and the Generation Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PacifiCorp's system at the Point of Delivery.

9.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests disclose an error exceeding one percent (1%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment.

9.4 To the extent not otherwise provided in the Generation Interconnection Agreement, all PacifiCorp's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### SECTION 10: BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 No later than the tenth (10<sup>th</sup>) day of each month, Seller shall provide to PacifiCorp by facsimile an invoice for amounts due under this Agreement for the preceding month, along with sufficient detail to allow PacifiCorp to verify the billing. Within ten (10) days of its receipt of Seller's invoice, PacifiCorp shall pay all undisputed amounts by wire transfer or otherwise as reasonably directed by Seller from time to time.

10.2 Either Party may offset against any payments owed to the other Party under this Agreement any undisputed amounts incurred after the Effective Date that are owed to it by the other Party pursuant to any other agreement between the Parties. If Seller and PacifiCorp disagree on the amount due under this Agreement or any other agreement, the lower of the amounts due asserted by each Party shall be so netted. After resolution of the disagreement, the balance (if any) shall be netted with the next payment, if any, due to either Party, or shall be paid in full within ten (10) days by the owing Party to the other.

10.3 Parties shall attempt in good faith to resolve any billing disputes within 30 days. Any undisputed invoice which is paid shall be deemed to be correct after 12 months. If either Party pays any invoice under protest and its position is subsequently upheld, or if an error in any billing is discovered within two (2) Years of the date on which it was submitted, interest shall accrue at the rate specified in Section 10.4, applied to the amount of any billing adjustment from the date the bill was initially paid to the date of the adjustment.

10.4 Unless otherwise provided herein, any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### SECTION 11: DEFAULT AND REMEDIES

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Failure of a Party to perform any material obligation imposed upon that Party by this Agreement or breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) days following written notice;

11.1.2 Seller's failure to cure any material default under the Generation Interconnection Agreement within the time allowed for a cure under such agreement.

11.2 In the event of a material uncured default hereunder that materially impacts its ability to perform hereunder, the non-defaulting Party may terminate this agreement by delivering written notice to the other party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

11.3 If this Agreement is terminated as a result of a material default of Seller's, Seller shall be liable to PacifiCorp for damages in the form of the net present value of Net Replacement Costs for Scheduled Deliveries that the Seller would otherwise have been obligated to provide hereunder for a period of time sufficient to allow PacifiCorp to secure a comparable substitute resource discounted at a rate equal to PacifiCorp's then-current after tax weighted cost of capital.

11.4 If this Agreement is terminated as a result of a material default of Seller, PacifiCorp may foreclose upon any Default Security provided pursuant to Section 8.2 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

## SECTION 12: INDEMNIFICATION, LIABILITY AND INSURANCE

### 12.1 Indemnities.

12.1.1 Seller agrees to release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with, the facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance of the Facility, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 PacifiCorp agrees to release, indemnify and hold harmless Seller, its directors officers, agents and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with, the energy delivered by Seller hereunder after the Point of Delivery or with facilities on PacifiCorp's side of the Point of Delivery or PacifiCorp's operation and/or maintenance of its facilities, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

12.2 Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one party to the other under any provision of this Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent entity.

12.3 Neither Party hereto shall not be liable to the other for special, punitive, indirect or consequential damages, whether arising from contract, tort (including negligence), strict liability or otherwise.

12.4 Each party hereto shall comply with any applicable laws, including Workers Compensation Laws.

12.5 Without limiting any liability or any other obligations of Seller, Seller shall secure and continuously carry with Best A-rated insurers or better the following insurance coverage:

- 12.5.1.1 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against “all risks” of physical loss or damage, including coverage for earth movement, flood and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with the terms available in the insurance market for similar facilities.
- 12.5.1.2 Employers Liability insurance with a minimum limit of \$1,000,000, to the extent Seller has employees.
- 12.5.1.3 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against Seller's liability for injury to persons or damage to property stemming from this Agreement. To the extent available without significant additional cost, such policy required herein shall include i) provisions or endorsements naming Pacificorp, its Board of Directors, Officers and employees as additional insured, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.
- 12.5.1.4 Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles, if any, whether owned, hired or non-owned, assigned to or used in connection with this Agreement.
- 12.5.1.5 To the extent available without significant additional cost, all liability policies required by this Agreement shall include provisions that such insurance is primary insurance with respect to the interests of Pacificorp and that any other insurance maintained by Pacificorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be

cancelled or their limits reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for non-payment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if cancelled for any other reason. A certificate in the form satisfactory to PacifiCorp certifying to the issuance of such insurance shall be furnished to PacifiCorp. Commercial General Liability coverage written on a “claims-made” basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

- 12.5.1.6 Insurance coverage provided on a “claims-made” basis shall be maintained by Seller for a minimum period of one (1) year after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

### SECTION 13: FORCE MAJEURE

13.1 As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of the Seller or of PacifiCorp that, despite the exercise of due diligence, such party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such a party, (ii) by the exercise of reasonable foresight such party could not reasonably have been expected to avoid (iii) by the exercise of due diligence, such shall be unable to overcome, except that nothing contained herein shall effect the obligation to pay. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission.

13.2 If either party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

13.2.1 the non-performing party shall promptly give notice to the other of the Force Majeure event excusing performance. Within one (1) week after the occurrence of the Force Majeure, the non-performing party shall give the other party written notice describing the particulars of the occurrence; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and

13.2.3 the non-performing party uses reasonable commercial efforts to remedy its inability to perform.

13.3 No obligations of either party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

13.4 Neither party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to the party's best interests.

13.5 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to a Force Majeure event, within six months after the occurrence of the event unless Seller is diligently pursuing the remedy of such event and has good-faith efforts underway to remedy such non-performance. For example, if related to facility repair, so long as Seller has with reasonable diligence pursued the repair but has been unable to do so due to lead times and parts availability, then no termination right shall apply.

#### SECTION 14: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties.

#### SECTION 15: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Utah, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### SECTION 16: PARTIAL INVALIDITY

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## SECTION 17: WAIVER

Any waiver at any time by either party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## SECTION 18: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of the Utah Public Service Commission. Upon reasonable request, either party shall submit to the other party copies of all local, state and federal licenses, permits and other approvals as then may be required by law relating to this Agreement or the Facility. Each Party shall maintain all local, state and federal licenses, permits and other approvals as may be required to fully perform hereunder.

## SECTION 19: SUCCESSORS AND ASSIGNS

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either party shall become effective without the written consent of the other party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender or venture partner as part of a financing transaction or as part of (a) a sale of all or substantially all or some of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## SECTION 20: ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility on and after the Commercial Operation Date. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

## SECTION 21: NOTICES

21.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested

To Seller: Desert Power, L.P.  
2603 Augusta Suite 880  
Houston, Texas 77057  
Attn: Catherine M. Fonfara  
Vice President & Manager

with a copy to: Desert Power, L.P.  
21200 N. Rowley Road  
Grantsville, UT 84029  
Attn: Plant Manager

To PacifiCorp: Manager  
QF Contracts  
PacifiCorp - Suite 625 LCT  
825 N.E. Multnomah  
Portland, Oregon 97232

21.2 The Parties may change the person to whom such notices are addressed, or the address to which notice shall be sent by providing written notices thereof in accordance with this Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_[Name]\_\_\_\_\_.

My commission expires:

\_\_\_\_\_ .

\_\_\_\_\_  
Notary Public

Desert Power LP

By: \_\_\_\_\_

Name: Charles M. Darling, IV

Title: President & General Manager

STATE OF Texas)

COUNTY OF Harris)

Subscribed and sworn to before me this \_\_\_\_ day of January 2004 by Charles M. Darling, IV.

My commission expires:

\_\_\_\_\_ .

\_\_\_\_\_  
Notary Public

EXHIBIT A  
DESCRIPTION OF SELLER'S FACILITY

**Seller's Facility:** Seller's Facility consists of a gas-fired turbine and generator sets manufactured by Hitachi under license from General Electric with a steam turbine and generator set. More specifically, the Facility generates power through its gas-fired turbine genset with heat recovery through a heat recovery steam generator (with available supplemental firing) powering a steam turbine genset.

**Nameplate Capacity Rating:** Approximately 120 MW, under the following conditions:  
59° F @ 20% R.H. at mean sea level.

**Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:** As installed, estimated output including supplemental firing, is approximately 90 MW; Nameplate Capacity Rating will be approximately of 120 MW. Differences are attributable to de-rating of the turbines for altitude and ambient conditions and for available steam.

**Station service requirements are described as follows:** Approximately 3 MW per hour at full operation.

**Location of the Facility:** The Facility has been constructed and will be expanded in the vicinity of the Rowley Substation in Tooele County, Utah. The location is more particularly described as follows:

All of Lots 1 and 2, Desert Power Planned Unit Development, according to the official plat thereof recorded October 4, 2001 as Entry No. 170027 in Book 707 of Plats at page 841 in the Tooele County Recorder's Office, and all easements and rights-of-way appurtenant thereto.

Power factor requirements:

EXHIBIT B

POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES

The high Side of Seller's transformer(s) at the Rowley substation, Tooele County, Utah.

EXHIBIT C  
REQUIRED FACILITY DOCUMENTS

Interconnection Agreement

EXHIBIT D

MONTHLY DELIVERY SCHEDULES

Dispatchable upon request of PacifiCorp up to Net Output

## EXHIBIT E

### START-UP TESTING

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PacifiCorp.

Required start-up test are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;

- tests; 11. Excitation and voltage regulation operation
- tests; 12. Open circuit and short circuit; saturation
- 13. Governor system steady state stability test;
- 14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
- 15. Auto stop/start sequence;
- 16. Level control system tests; and
- 17. Completion of all state and federal environmental testing requirements.

EXHIBIT F  
FUEL PLAN

Desert Power shall procure gas in the natural gas marketplace at market prices, plus any attendant fees, taxes or mark ups, and have it delivered to its plant by a pipeline serving the plant. The only such pipeline currently is Questar Gas Company but would include any subsequently constructed and operational pipeline capable of serving the power plant.

## EXHIBIT G

PacifiCorp's DJ PV Shaping Factor by Day or Season as updated from time to time.